



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0662; FRL-9465-01-R3]

Air Plan Approval; Maryland; Nonattainment New Source Review Requirements for 2015

8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of a prior proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on behalf of the State of Maryland (Maryland). This revision certifies that Maryland's existing nonattainment new source review (NNSR) program, covering the Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC nonattainment area for the 2008 8-hour ozone national ambient air quality standards (NAAQS), is at least as stringent as applicable Federal requirements. EPA is proposing to approve this revision in accordance with the requirements of the Clean Air Act (CAA). Additionally, EPA is withdrawing a prior proposed approval of a related Maryland SIP submittal regarding ozone interprecursor trading.

DATES: As of January 20, 2022, EPA withdraws the proposed rule that published on October 27, 2020. 85 FR 68029. Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2021-0662 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at He.Yongtian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 2020, MDE submitted SIP # 20-05: “Nonattainment New Source Review (NNSR) Certification for the State of Maryland 2015 Ozone NAAQS Nonattainment Areas,” (#20-05) as a revision to Maryland’s SIP. In this SIP revision, MDE is certifying that its existing NNSR program, covering the Baltimore nonattainment area (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Maryland portion of Philadelphia-Wilmington-Atlantic City nonattainment area (which includes Cecil County in Maryland), and the Maryland portion of the Washington, DC nonattainment area (which includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors.

On October 1, 2015 (effective December 28, 2015), EPA promulgated a revised 8-hour

ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR 50.19, the 2015 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm. Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC-MD-VA area were classified as marginal nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014-2016 ambient air quality data. 83 FR 25776 (June 4, 2018).

On December 6, 2018, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021.¹ 83 FR 10376 (March 9, 2018) and 83 FR 62998 (December 6, 2018).

II. Summary of SIP Revision and EPA Analysis

This rulemaking is specific to Maryland's NNSR requirements for the Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC-MD-VA nonattainment area. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the ozone NAAQS are located in 40 CFR 51.160 through 51.165. The SIP Requirements Rule explained that, for each

¹ EPA has not yet formally determined whether these areas timely attained, and any such final determination will be made by EPA in a future action.

nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2015 8-hour ozone standard (i.e., August 3, 2021).

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are set forth in 40 CFR 51.165. See 40 CFR 51.1114. The SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F);² set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9) (ii)–(iv). For the 2015 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. See 40 CFR 51.165(a)(12).

Maryland’s longstanding SIP approved NNSR program, established in Code of Maryland Regulations (COMAR) Air Quality Rule COMAR 26.11.17 – Nonattainment Provisions for Major New Sources and Major Modifications, applies to the construction and modification of

² EPA notes that neither COMAR 26.11.17 nor Maryland’s approved SIP have the regulatory provision for any emissions change of VOC in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Maryland has never had an area designated extreme nonattainment for any of the ozone NAAQS. Thus, the Maryland SIP is not required to have this requirement for VOC in extreme nonattainment areas until such time as Maryland has an extreme ozone nonattainment area.

major stationary sources in nonattainment areas. In its June 3, 2020 SIP revision, Maryland certifies that the version of the Air Quality Rule COMAR 26.11.17 in the SIP is at least as stringent as the Federal NNSR requirements for the Philadelphia-Wilmington-Atlantic City nonattainment area, the Washington, DC nonattainment area, and the Baltimore nonattainment area. EPA last approved revisions to the SIP approved version of Maryland's NNSR rule in 2018 in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone NAAQS. 83 FR 3982 (January 29, 2018). Maryland has not changed these major stationary source threshold provisions in COMAR 26.11.17.01(17), so they remain in Maryland's federally approved SIP.³ All of the sources located in the 2015 8-hour ozone nonattainment areas in Maryland are required to meet a major stationary source threshold of 25 tons or more per year of VOC or NOx. Because Maryland's major stationary source thresholds were established for the 1997 8-hour ozone NAAQS nonattainment designations, they have been changed, and therefore they are more stringent than required by the 2008 and 2015 8-hour ozone NAAQS.

COMAR 26.11.17 currently includes provisions allowing ozone interprecursor trading. On January 31, 2020, MDE submitted a SIP revision (#20-02) to incorporate the interprecursor trading provisions of COMAR 26.11.17 into the Maryland SIP. On October 27, 2020, EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed to approve Maryland SIP revision #20-02). 85 FR 68029 (October 27, 2020). MDE's SIP Revision #20-05 submission to EPA referenced those interprecursor trading provisions of COMAR 26.11.17 in its certification that Maryland's NNSR program was consistent with Federal requirements. Subsequently, on January 29, 2021, the United States Court of Appeals for the D.C. Circuit concluded that ozone interprecursor trading is not permissible under the CAA and vacated ozone interprecursor trading, i.e., the interprecursor trading provision in the Federal NNSR regulations.

³ Under the 1997 8-hour ozone NAAQS, the Baltimore Area was classified as serious nonattainment and the Philadelphia-Wilmington-Atlantic City and Washington, DC Areas were classified as moderate nonattainment.

Sierra Club v. EPA, 985 F.3d 1055 (D.C. Cir. 2021). EPA removed the language allowing interprecursor trading for ozone and restored the language in the NNSR regulations to the form it was in after the EPA's 2008 PM_{2.5} implementation rule. 86 FR 37918 (July 19, 2021). After the court decision and EPA's withdrawal of the interprecursor trading provisions, by letter dated October 26, 2021, Maryland withdrew SIP revision #20-02 with the interprecursor trading provisions in its entirety. Additionally, in a separate clarification letter dated October 26, 2021, MDE requested that EPA withdraw from EPA's consideration those portions of SIP revision #20-05 which related to ozone interprecursor trading. Furthermore, MDE committed to removing the interprecursor trading provisions from COMAR and to not implementing them in the interim. Consequently, those provisions are no longer pending action before EPA. EPA is publishing this notice of proposed rulemaking to notify commenters that EPA no longer intends to take final action on SIP revision #20-02 or to consider that SIP revision in this proposal to approve SIP revision #20-05.

III. Proposed Action

EPA's review of this material indicates that the Maryland's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. EPA is proposing to approve Maryland's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Baltimore, MD, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, and Washington, DC-MD-VA nonattainment areas, which was submitted on June 3, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Additionally, because MDE has officially withdrawn its January 31, 2020 SIP revision #20-02 in its entirety, EPA is withdrawing the proposed action for that SIP revision in this action.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the Maryland’s NNSR program and the 2015 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section

307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 20, 2022.

Diana Esher,
Acting Regional Administrator,
Region III.

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